

# ***A Higher Purpose: Censorship and Intellectual Freedom Today***

Peter Coyl

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## Peter D. Coyl, MLIS

Library Director & CEO

 SACRAMENTO PUBLIC LIBRARY

President, Freedom to Read Foundation (2022-23)

ALA Intellectual Freedom Committee

ALA Intellectual Freedom Round Table Councilor

**This is not legal advice.** Always consult an Attorney licensed to practice law in your jurisdiction.

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CONGRESS SHALL MAKE NO LAW *respecting*  
*an establishment of religion, or prohibiting the free*  
*exercise thereof; or abridging the freedom of speech,*  
*or of the press; or the right of the people peaceably*  
*to assemble, and to petition the Government for a*  
*redress of grievances.*

 **THE FIRST AMENDMENT  
TO THE U.S. CONSTITUTION**

15 DECEMBER 1791

# Notable First Amendment Cases

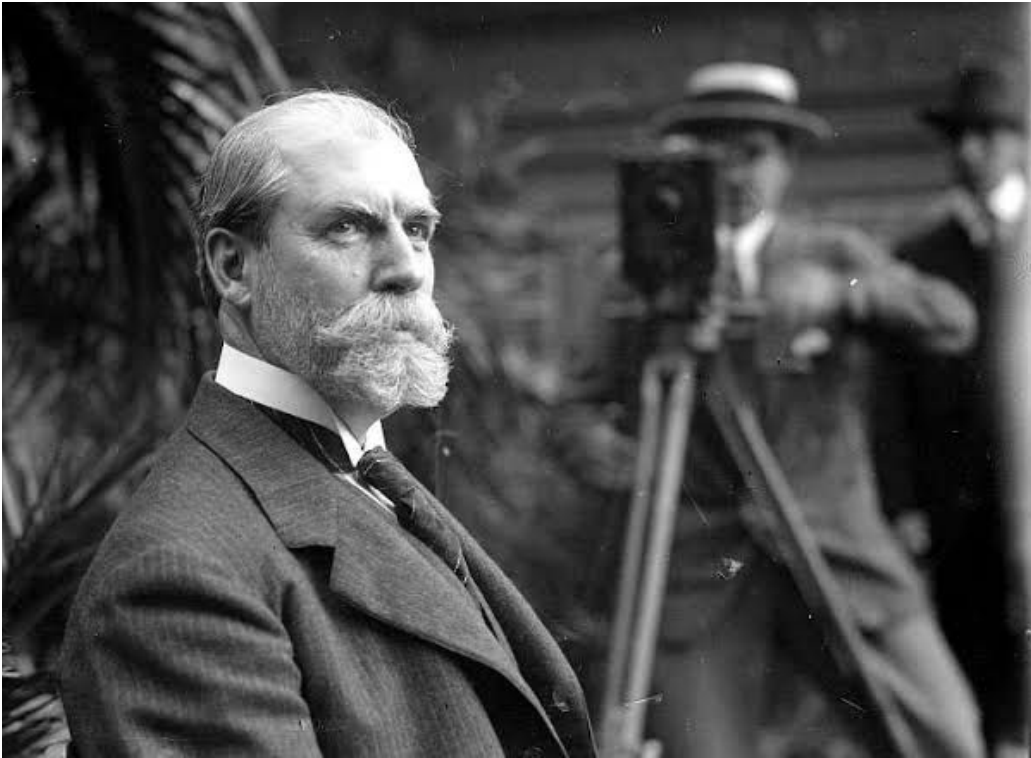
# *Schenck v. United States* (1919)



“...it is a fact that a man in a crowded auditorium, or any theatre, who yells ‘fire’ and there is no fire, and a panic ensues and someone is trampled to death, may be rightfully indicted and charged with murder...”

Justice Oliver Wendell Holmes, Jr.

# *Cox v. New Hampshire (1941)*



Chief Justice Charles E. Hughes

The government has a right to impose **time, manner, and place** restrictions to ensure the order and safety of residents as long as these restrictions are based on uniform, nondiscriminatory standards and not based on the content of the message.

# *Terminiello v. City of Chicago (1949)*



“Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. **That is why freedom of speech, though not absolute, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger** of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.”

Justice William O. Douglas

# *Terminiello v. City of Chicago (1949)*



“A function of free speech under our system is to invite dispute. It may indeed **best serve its high purpose when it induces a condition of unrest,** creates dissatisfaction with conditions as they are, or even stirs people to anger.”

Justice William O. Douglas



## *Jacobellis v. Ohio* (1964)



"I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I **know it when I see it**, and the motion picture involved in this case is not that."

Justice Potter Stewart

# *Tinker v. Des Moines (1969)*



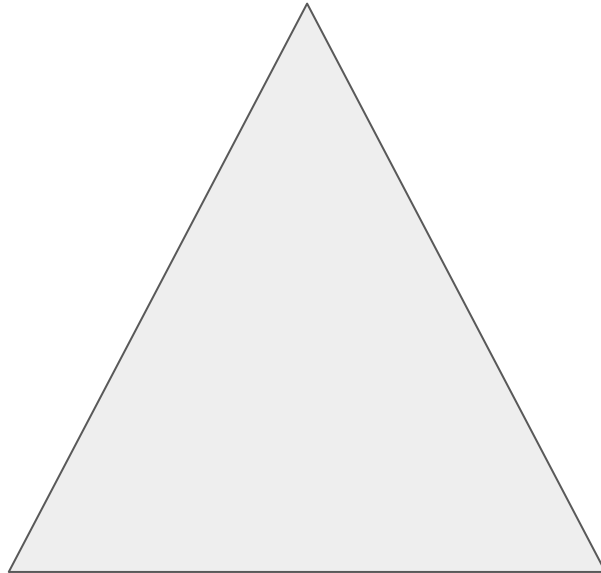
Supreme Court  
enshrined students  
free speech rights

# *Ward v. Rock Against Racism (1989)*

Any government restriction to the first amendment must meet the three pronged test:

**Narrowly tailored**

*Must be least restrictive*



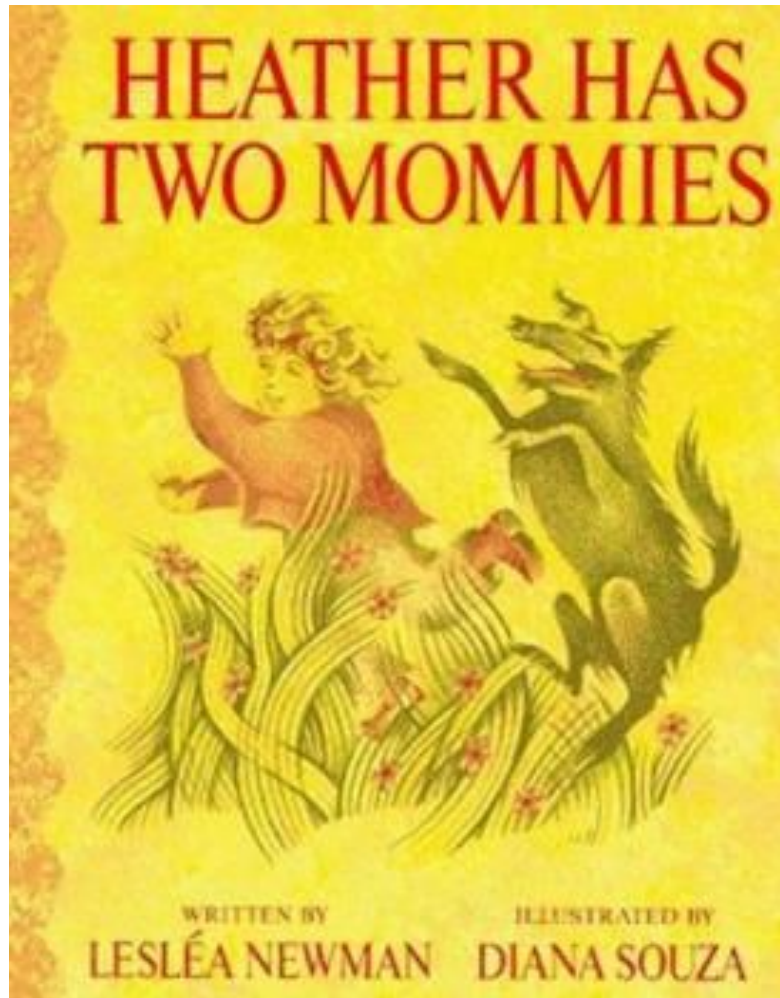
**Alternative channels**

*Rules must allow for other avenues of speech*

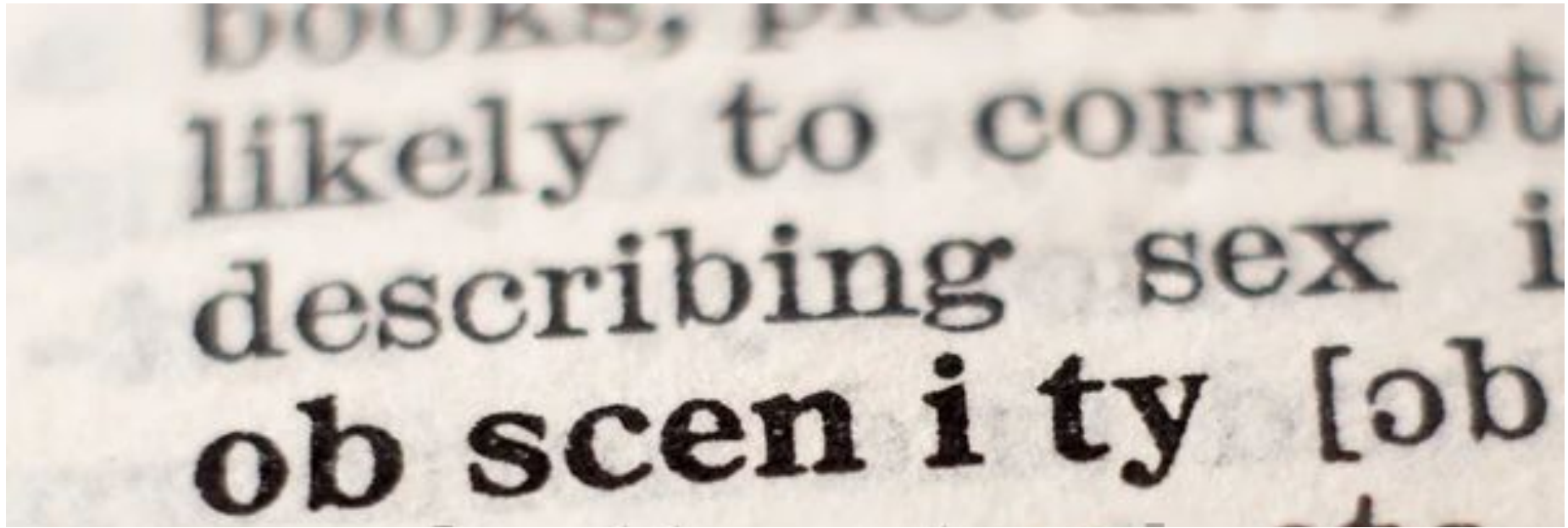
**Content Neutral**

*Cannot (dis)favor one viewpoint or group*

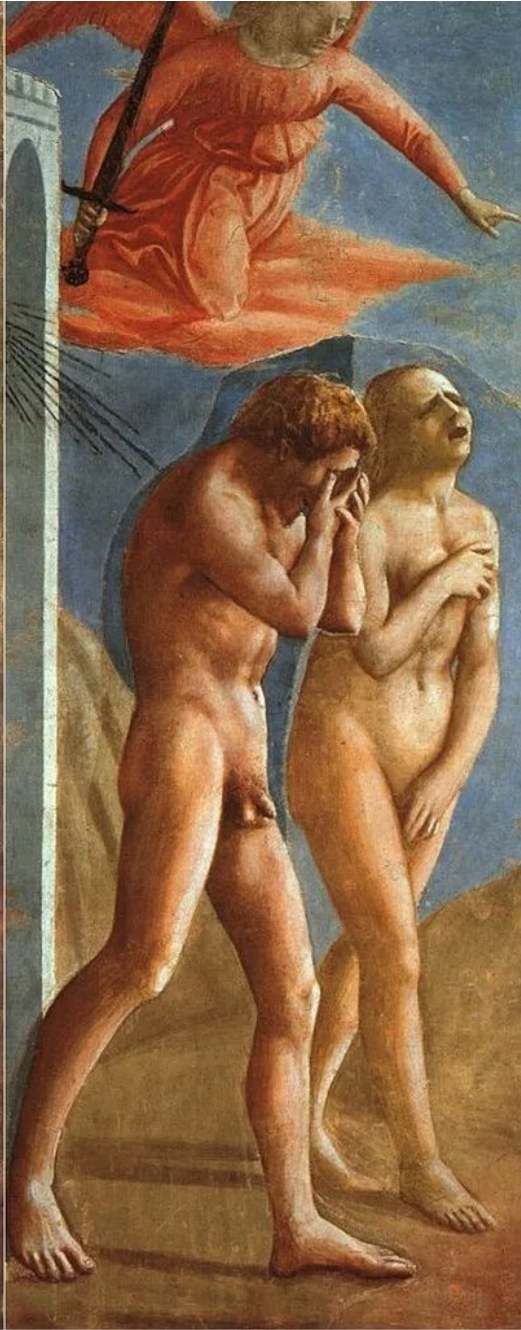
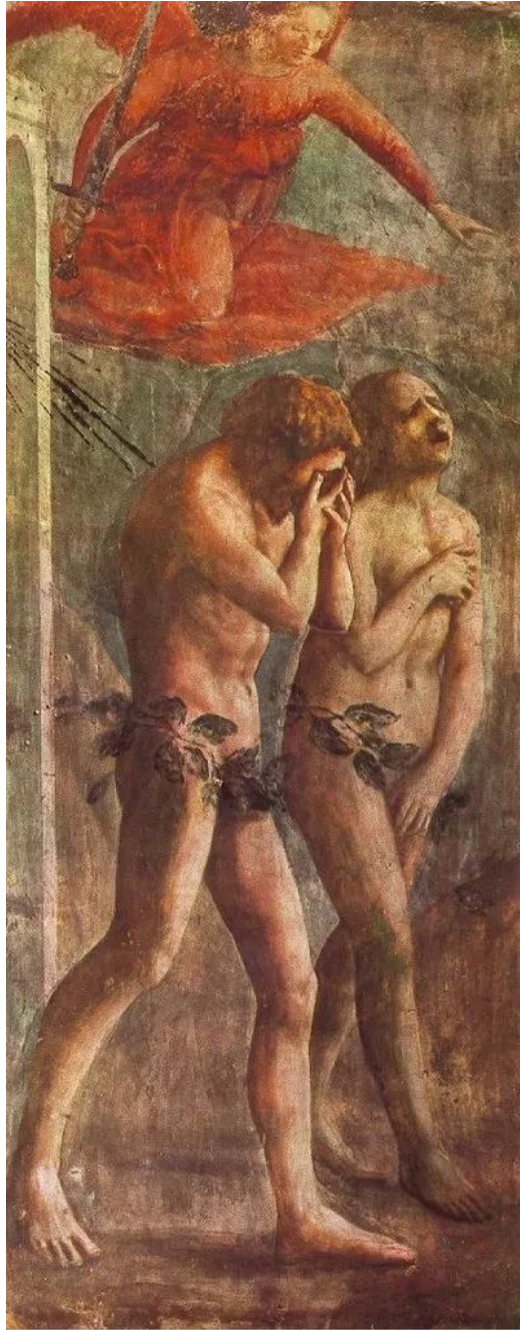
# *Sund v. City of Wichita Falls (2000)*



- Not a Supreme Court case (US District Court)
- Organized efforts to remove materials violate the law
- Moving materials to other parts of the library could be considered censorship

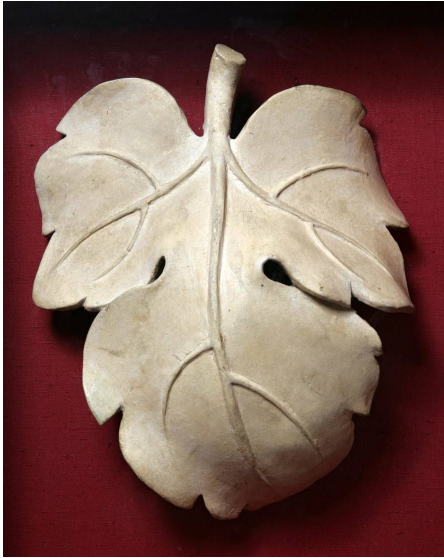


# Defining Obscenity

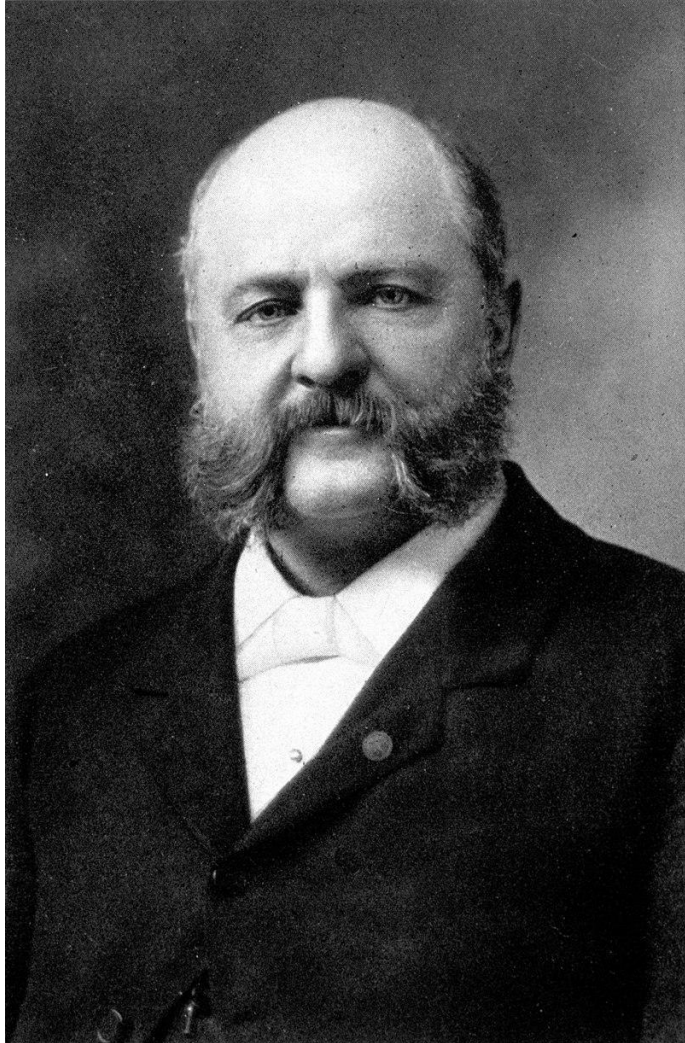




22a. - FIRENZE - Accademia di Belle Arti - Il David di Michelangelo



# *Comstock Act (1873)*



- Defined contraceptives as obscene and illicit
- Federal offence to mail or bring across state lines birth control
- Made it illegal to sell, publish, or possess an obscene book but did not define obscenity





**THE FIRST STEP.**

Ice cream parlors of the city and fruit stores combined, largely

1915  
*Rules for Teachers*

1. You will not marry during the term of your contract.
2. You are not to keep company with men.
3. You must be home between the hours of 8 p.m. and 6 a.m. unless attending a school function.
4. You may not loiter downtown in ice cream stores.
5. You may not travel beyond the city limits unless you have the permission of the chairman of the board.
6. You may not ride in a carriage or automobile with any man unless he is your father or brother.
7. You may not smoke cigarettes.
8. You may not dress in bright colors.
9. You may under no circumstances dye your hair.
10. You must wear at least two petticoats.
11. Your dresses must not be any shorter than two inches above the ankle.
12. To keep the school room neat and clean, you must: sweep the floor at least once daily, scrub the floor at least once a week with hot, soapy water, clean the blackboards at least once a day, and start the fire at 7 a.m. so the room will be warm by 8 a.m.



Old Sacramento Schoolhouse Museum



Regina v. Hicklin (1868)

Hicklin Test: A work could be considered obscene if any portion of it was obscene regardless of context.

*British Case the US relied on*

Roth v. United States (1957)

Whether the average person, applying contemporary community standards would find that the material appeals to a prurient interest in sex, and whether the material was utterly without redeeming social value.

Miller v. California (1973)

Miller Test: A work could be considered obscene if three conditions are met.

# *Miller Test*

1. Whether the average person applying contemporary community standards would find the work, **taken as a whole**, appeals to the prurient interest;
2. Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
3. Whether the work, **taken as a whole**, lacks serious literary, artistic, political or scientific value.

# Book Banning Today

A Higher Calling

# THE SACRAMENTO BEE

Many who rallied in Sacramento Monday see their movement as a biblical calling — they answer to God, not the government — and believe that the state is undermining the bedrock principle of local control of schools.

# Conservatives join liberals in ‘quiet and polite’ Idaho protest to protect their library from book-banners

But they have made their feelings known at library board meetings. “Things need to change,” one man told the board at a meeting in late August. “Otherwise, you bring curses upon yourselves. Period. From the Most High.”

And at a meeting in July, Donna Capurso, a local realtor, said this: “My job is to protect our kids from sexual deviants, who will be drawn to our library if inappropriate sexual material is on our library shelves.”

# THE SUN

Hundreds of people took to Facebook in response to Lankford's and the church's beliefs — on the website, he called drag queens “adult perverts with a penchant for sexualizing children” and called them “mentally disturbed and morally degenerate.”

Before the reading, Lankford said he was “surprised but thankful” that he could hold the event, which he said is not meant to spread hate but rather to allow them to “live as Christians publicly,” as the Bible tells them.

“I thought to myself, this is a wonderful opportunity for us to encourage children to love books, to also to have learning and to also be a Christian in public,” Lankford said in an interview. “Just as Christians, we worship on Sunday, but the Bible tells us that all of our life is worship, whether we eat or whether we drink, everything is done to the glory of God. So we want to be here to the glory of God in our neighborhood.”

Because “gender is a hot issue,” Lankford understands the response to his event. But it's become more difficult to have “any meaningful dialogue,” he added.

“The polarization that's happening in the country is unbelievable. Everything seems to devolve into left vs. right, conservative vs. liberal, and that's not my goal, to engage in cultural war,” he said. “My goal is just to teach our children in the community and our children who God is, and how he has a great plan for their life and loves them.”

## STOP promoting unnatural Vice and Immorality to our Children!

A man in our library dressed as an overly sexualized woman is part of the LGBTQ agenda in their attempt to groom and sexualize our young, innocent children.



We must peacefully and legally say NO to use our library to promote the trans-and homosexual agenda of indecency, impurity and unnatural vice.

*"This is gonna be the grooming of the next generation."  
-Drag Queen Dylan Pointiff*

### Join us for a Rosary Rally



**Where:** St. Charles City - County Library Administration  
77 Boone Hills Drive,  
Saint Peters, MO. 63376

**When:** Tuesday, August 15<sup>th</sup> 2023 at 4:30 PM

Please gather on the public sidewalk.

Contact Rally Captain Rachel at 303-815-3946,  
TFP-ANF at 844-830-3570 or email [protest@TFP.org](mailto:protest@TFP.org)  
for more information.

Our public rosary will be peaceful and legal, asking for God's mercy and offering reparation.

**Please forward this to everyone you know and ask them to attend this very important rally!**



NER FITZGERALD BUC SANDBURG FROST LONDON



PROTECT CHILDREN  
SUPPORT PARENTS  
PROTECT CHILDREN  
SUPPORT PARENTS

**FOUND IN FLORIDA**

The Genderbread Person is a person's *gender identity*

Identity  
Attraction  
Sex

Gender Identity: Masculinity, Femininity  
Gender Expression: Masculinity, Femininity  
Anatomical Sex: Male, Female

Identity ≠ Expression ≠ Sex  
Gender ≠ Sexual Orientation

Sex Assigned At Birth: Male, Female, Other

Sexually Attracted to: Men, Women, Both, Neither

Sexually Attracted to: Men, Women, Both, Neither

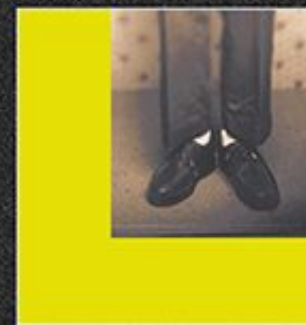
Sex Assigned At Birth: Male, Female, Other

Sexually Attracted to: Men, Women, Both, Neither



# TOP 13

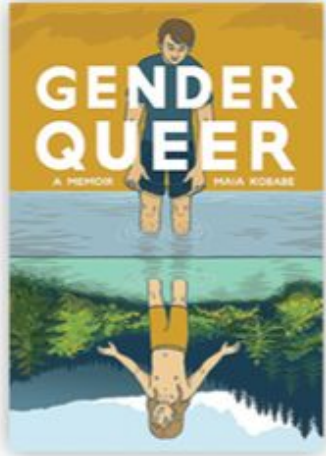
# MOST CHALLENGED BOOKS OF 2022



[ALA.ORG/BBOOKS](https://ALA.ORG/BBOOKS)

ALA American Library Association

1



### GENDER QUEER

by Maia Kobabe

**REASONS:** LGBTQIA+ content, claimed to be sexually explicit

2



### ALL BOYS AREN'T BLUE

by George M. Johnson

**REASONS:** LGBTQIA+ content, claimed to be sexually explicit

3



### THE BLUEST EYE

by Toni Morrison

**REASONS:** rape, incest, claimed to be sexually explicit, EDI content

4

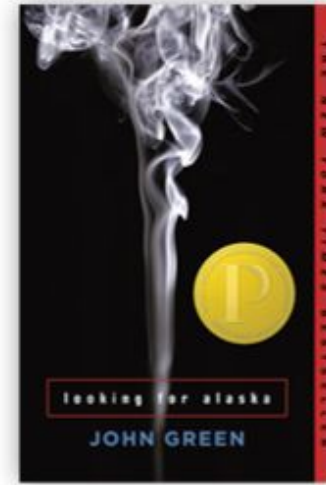


### FLAMER

by Mike Curato

**REASONS:** LGBTQIA+ content, claimed to be sexually explicit

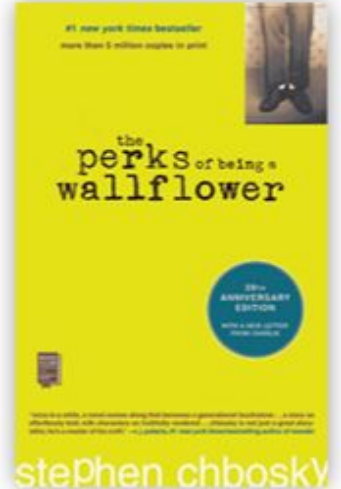
5



### LOOKING FOR ALASKA

by John Green

**REASONS:** claimed to be sexually explicit, LGBTQIA+ content

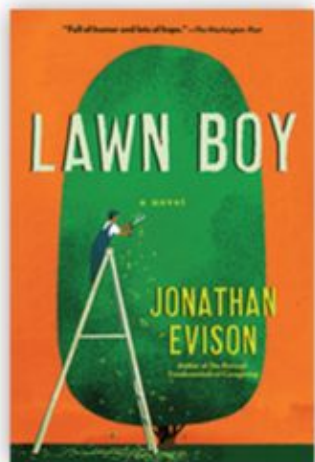


### THE PERKS OF BEING A WALLFLOWER

by Stephen Chbosky

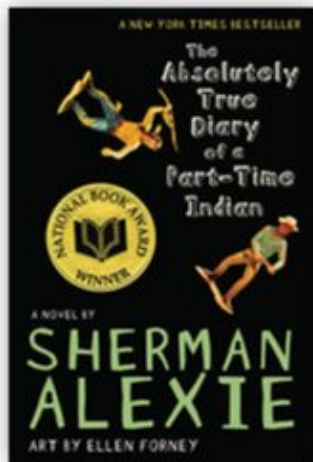
**REASONS:** claimed to be sexually explicit, LGBTQIA+ content, rape, drugs, profanity

7



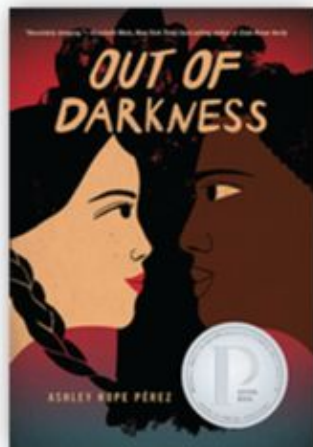
**LAWN BOY**  
by Jonathan Evison  
**REASONS:** LGBTQIA+ content, claimed to be sexually explicit

8



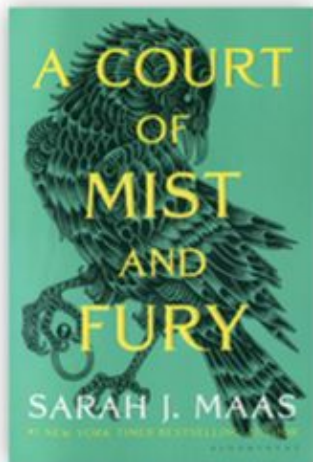
**THE ABSOLUTELY TRUE DIARY OF A PART-TIME INDIAN**  
by Sherman Alexie  
**REASONS:** claimed to be sexually explicit, profanity

9



**OUT OF DARKNESS**  
by Ashley Hope Pérez  
**REASON:** claimed to be sexually explicit

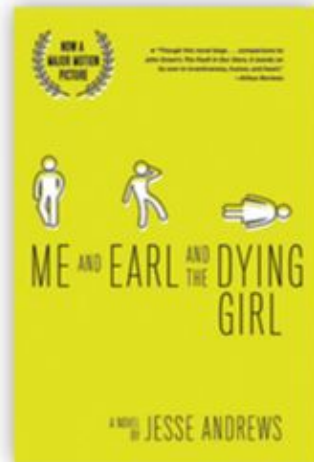
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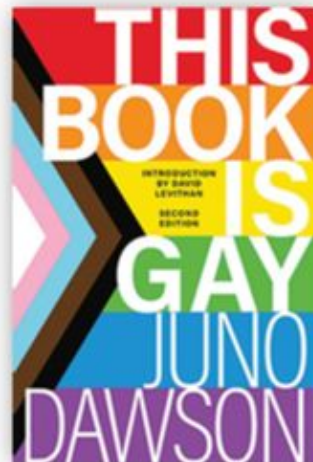
**A COURT OF MIST AND FURY**  
by Sarah J. Maas  
**REASON:** claimed to be sexually explicit



**CRANK**  
by Ellen Hopkins  
**REASONS:** claimed to be sexually explicit, drugs



**ME AND EARL AND THE DYING GIRL**  
by Jesse Andrews  
**REASONS:** claimed to be sexually explicit, profanity



**THIS BOOK IS GAY**  
by Juno Dawson  
**REASONS:** LGBTQIA+ content, sex education, claimed to be sexually explicit

JANUARY 1 – AUGUST 31, 2023

92%

OF THE BOOKS  
CHALLENGED WERE  
PART OF ATTEMPTS  
TO CENSOR  
MULTIPLE TITLES



OFFICE FOR  
*Intellectual Freedom*  
American Library Association

JANUARY 1 – AUGUST 31, 2023

695

ATTEMPTS TO  
**BAN OR RESTRICT**  
LIBRARY MATERIALS  
AND SERVICES

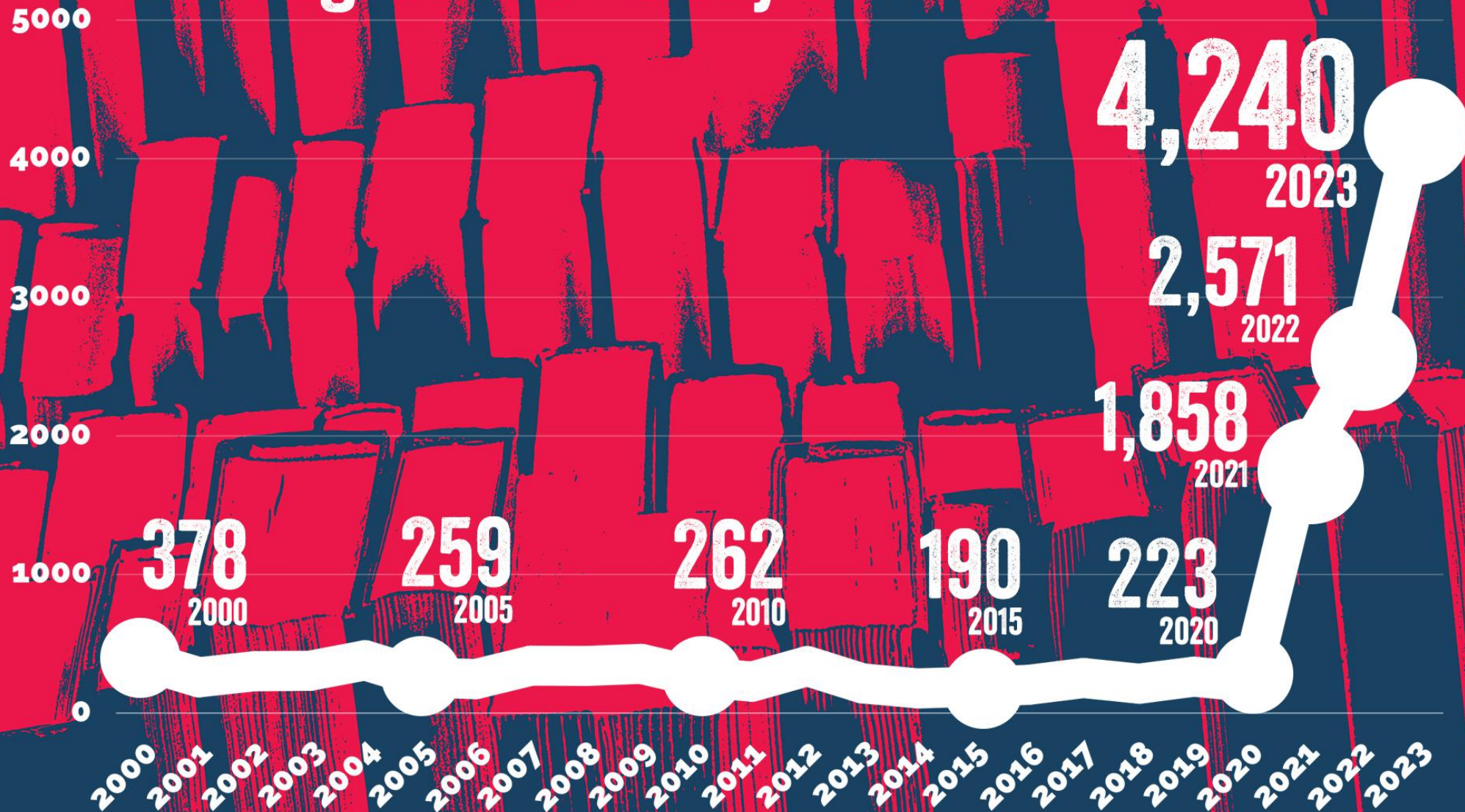


OFFICE FOR  
*Intellectual Freedom*  
American Library Association

# Number of Unique Titles Challenged in the U.S. by Year



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American Library Association





# Meeting Rooms and Community Groups

Everything you wanted to know but were afraid to ask

# **Drag Queen Story Hour disrupted by men shouting slurs, authorities say**

The Alameda County Sheriff's Office says it has opened a hate crime investigation into the incident, which took place at an event for children and families.

**A Drag Queen Was Interrupted By A Right-Wing Group During A Library's Story Hour, And Police Are Investigating**

**Deputies: Proud Boys disrupted drag queen storytelling at San Lorenzo library**

## Traditional Public Forum

A public area that is a ***traditional setting*** for speech and the exchange of ideas.

Libraries should be aware of First Amendment rules around outside gathering places like plazas.

## Limited Public Forum

Open for speech, but within certain limits.

City Council or Library Board Meetings fall under this category

## Designated Public Forum

A place ***held open by the government*** for speech; may be either ***unlimited*** or ***limited***.

Library meeting room is a designated public forum (*Concerned Women for America, Inc. v. Lafayette County*, 883 F.2d 32 (5<sup>th</sup> Cir. 1989))

# Time, Manner, and Place Restrictions

- Content Neutral (includes topic and group)
  - Cannot have onerous requirements based solely on potential issues
  - You can restrict based on residency or “cultural, civic, and educational” purposes
- Limits on size and volume (safety and well being)
  - Reasonableness is a standard
  - You can also specify frequency, advertising standards, etc.
- Limit on location (public forum?)
  - Reasonableness is a standard
  - Can be only during library hours or only certain meeting rooms for the public versus library only use

# Freedom of speech in America

- The First Amendment protects all speech, even hateful and abhorrent speech
  - What is permissible speech?
  - Who keeps the list?
  - Supreme Court ***Snyder v. Phelps (2011)***: *Speech cannot be restricted even if it is upsetting*
- We do have clear definitions for:
  - Defamation
  - Slander/Libel
  - Fighting Words and true threats
    - Has a standard of “reasonableness”
  - Discriminatory speech

# Hate speech in America

- Not clearly defined in US law, but has been defined narrowly in some situations, but is most often not illegal
  - Public displays such as burning of crosses or swastikas
- No official hate group listing
  - These are compiled by non-government agencies (Southern Poverty Law Center, etc) and have no legal basis

# Our Higher Purpose

Why We Do What We Do

# Drag story hour: Proud Boys targeted a Bay Area library last year. This year, both sides rallied

While moments of the day's two opposing protests were tense and the fear of potential violence loomed, Alameda County Librarian Cindy Chadwick, said the library was prepared for the political actions. The day ended without ever boiling over into physical violence.

In a roundabout way, Chadwick said that while the day's events were fraught, its backdrop did demonstrate the power of the national library system to be a platform for civic discourse.

"It's democracy in action, right?" said Chadwick. "This is exactly the place where these kind of things should happen. It's a public library. [...] This is a place for those for different viewpoints, for different backgrounds to meet."



Book Bans and the Librarians Who Won't Be Hushed

**Illinois becomes first state to penalize libraries  
that ban books**

**North Fort Myers High School teacher  
resigns over book ban**

We do not protect the right to read A  
particular book, we protect the right to  
read ANY book.

“Freedom for the thought we hate.”

–Justice Oliver Wendell Holmes  
*United States v. Schwimmer (1929)*



**Questions?**

[PeterDCoyl@gmail.com](mailto:PeterDCoyl@gmail.com)